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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/962,679	08/08/2013	Michael Paul Bailey	058083-0884066 (O0012C1)	2355
72058	7590	02/01/2018	EXAMINER	
Kilpatrick Townsend & Stockton LLP			OWYANG, MICHELLE N	
Adobe Systems, Inc. 58083			ART UNIT	
Mailstop: IP Docketing - 22			PAPER NUMBER	
1100 Peachtree Street, Suite 2800			2168	
Atlanta, GA 30309-4530			NOTIFICATION DATE	
			DELIVERY MODE	
			02/01/2018	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL PAUL BAILEY

Appeal 2017-008012¹
Application 13/962,679
Technology Center 2100

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and
ADAM J. PYONIN, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a final rejection of claims 63–78, which are all of the pending claims. *See* App. Br.

1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Adobe Systems Incorporated is identified as the real party in interest. *See* App. Br. 1.

STATEMENT OF THE CASE

Appellant's disclosure relates to "a data format for storage of website traffic data, such as for later retrieval, analysis, and reporting in connection with web analytics functionality." Spec. ¶ 12. Claims 63 and 71 are independent. Claim 63 is reproduced below for reference (with emphasis added):

63. A method for compressing website traffic data for storage, the method comprising:

receiving a data set comprising rows of the website traffic data, the rows comprising row identifiers and fields of values;

identifying, by a computing device, a contiguous range of rows in the data set based on all rows of the contiguous range of rows having a same unique value for a field, wherein the contiguous range of rows includes a start row, an end row, and one or more rows between the start row and the end row; and

compressing, by the computing device, the website data by generating a compressed representation of the data set, wherein the compressed representation identifies:

an indication of the same unique value; and

the contiguous range of rows in the data set,

wherein the contiguous range of rows is identified, in the compressed representation, by (i) a start row number of the start row having the same unique value for the field and (ii) an end row number of the end row having the same unique value for the field,

wherein the contiguous range of rows is also identified, in the compressed representation, without the compressed representation explicitly stating row numbers of the one or more rows between the start row and the end row.

The Examiner's Rejections

Claims 63 and 65 stand rejected under the ground of nonstatutory obviousness-type double patenting over claims 1 and 2 of Bailey (US 8,538,969 B2; Sept. 17, 2013). Final Act. 8.²

Claims 63–78 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 12.

Claims 63, 69, 71, and 77 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Calascibetta (US 2002/0138464 A1; Sept. 26, 2002) and Ambroziak (US 6,055,526; Apr. 25, 2000). Final Act. 15.

Claims 64–68, 70, 72–76, and 78 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Calascibetta, Ambroziak, and Tarin (US 2008/0319939 A1; Dec. 25, 2008). Final Act. 21.

ANALYSIS

We have reviewed the appealed rejection for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Cf. Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Except as noted herein, we are not persuaded the Examiner erred, and we adopt as our own the findings and reasons set forth by the Examiner. We highlight and address specific findings and arguments for emphasis as follows.

² Appellant filed a terminal disclaimer in response to this rejection. *See* App. Br. 3 (n.1). We decline to reach the merits of the obviousness-type double patenting rejection.

A. 35 U.S.C. § 101

Appellant argues “claims 63-78 . . . recite significantly more than any abstract idea, [therefore,] the Examiner erred in rejecting these claims under 35 U.S.C. § 101.” App. Br. 11. Particularly, Appellant notes that “[w]hile an abstract idea by itself is not patentable, a practical application of an abstract idea may be deserving of patent protection,” and here the claimed invention “takes advantage of particular characteristics of website traffic data and thereby provides improved compression results.” App. Br. 3; Reply Br. 4 (quoting Spec. ¶ 11).

We are persuaded by Appellant’s arguments. An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal citation and quotation marks omitted). The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 79 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” e.g., to an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the inquiry proceeds to the second step, where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that

“transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

We note the Examiner determines the claims are abstract because they are directed to “organizing information through mathematical correlations,” and “obtaining and comparing intangible data.” Ans. 5. We do not agree, however, that “the additional [claim] elements do not amount significantly more than the judicial exception” under step 2 of the *Alice* test. *Contra* Ans. 7; see *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300 (Fed. Cir. 2016) (“Indeed, even if we were to agree that claim 1 is directed to an ineligible abstract idea under step one, the claim is eligible under step two because it contains a sufficient ‘inventive concept’”). Although the recited method may organize and compare data, the claimed steps go beyond those of a general purpose computer for merely receiving, processing, storing, and transmitting data, as stated by the Examiner. *See* Ans. 7. Rather, we agree with Appellant that the claimed “features clearly effect an improvement to a technical field” (App. Br. 10), as the claims recite an “improvement in the claimed data compression as described at, for example, paragraphs [0043]-[0049] and recited the independent claims (e.g., the recitation of the compression operations of paragraphs [0043]-[0046] in the independent claims[])” (Reply Br. 4). *See* App. Br. 9–11.

We are persuaded by Appellant that the compression steps, as particularly recited in the claims, comprise an improvement to the underlying technology; thus, the claims recite “significantly more” than the abstract idea. App. Br. 10; see also *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016) (“the claimed invention represents a ‘software-based invention[] that improve[s] the

performance of the computer system itself”); *compare Alice*, 134 S. Ct. at 2359 (finding claims do not recite significantly more when the “claims do not, for example, purport to improve the functioning of the computer itself”).

Consequently, we find the Examiner erred in concluding the claims are unpatentable pursuant to the two step *Alice* test. We do not sustain the Examiner’s rejection of the claims under 35 U.S.C. § 101.

B. 35 U.S.C. § 103(a)

Appellant argues the Examiner’s obviousness rejection of independent claim 63 is in error, because “the Examiner confuses *an illustration choice* in Ambroziak FIG. 7 (i.e., the ellipsis between ‘ID₁’ and ‘ID₁₅’) with a disclosure of the claimed data structure, in which a contiguous row of data is identified . . . *without explicitly identifying row numbers of intervening rows.*” Reply Br. 9. Appellant contends “the [Ambroziak] disclosure lacks any teaching that the document IDs are included in a compressed representation where some document identifiers are not explicitly listed, as alleged by the Examiner.” Reply Br. 10.

Appellant’s arguments do not persuade us of Examiner error. The Examiner finds, and we agree, that “Ambroziak illustrates that when it comes to a [contiguous] range of values, a compressed representation having a starting value and end value without explicitly stating the values in between is commonly used.” Ans. 14; Ambroziak Fig. 9. Identifying a range without stating all elements in the range is a well-known technique to save space, as evidenced by the references. *See* Final Act. 17; Ambroziak Figs. 7, 9; 12:59–61, 15:5–10. Further, Appellant does not persuade us the Examiner erred in finding one of ordinary skill would utilize the range

identification teachings of Ambroziak in combination with the other cited references. *See id.*; Ans. 15; *see also In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom”). Accordingly, we sustain the Examiner’s rejections of independent claim 63, as well as independent claim 71 commensurate in scope, and dependent claims 64, 69, 70, 72, 77, and 78 not separately argued. *See Reply Br. 10.*

Appellant additionally argues the Examiner’s obviousness rejection of claims 65, 66, 73, and 74 is in error, because “the Examiner alleges, in effect, that because Calascibetta and Tarin both include the term ‘offset,’ the combination of these references discloses the claimed feature.” Reply Br. 11 (citing Ans. 17–19). Appellant contends that “the Examiner conflates the existence of offsets in any context, as disclosed by Calascibetta and Tarin, with the specific use of offsets required by claims 65, 66, 73, and 74.” Reply Br. 11.

Appellant’s arguments do not persuade us of Examiner error. The Examiner finds, and we agree, that “Tarin discloses identifying [an] offset value representing a full value, hence the full value is identified as an offset value for reducing space.” Ans. 17 (citing Tarin ¶¶ 93–94). In particular, Tarin states that when using “output values of a function of contiguous integer values,”

[t]he value list in this case need only contain the offset of the output of the function, instead of the full value, and is arranged such that the offsets plus the outputs of the function produce ordered values.

Tarin ¶ 94. Thus, one of ordinary skill in the art would understand Tarin teaches the use of offsets to compress a list of ordered and contiguous integer values. The Examiner further finds, and we agree, that “it is well known to one skilled in the art of computing that converting or identifying values into offset[s] helps reduce space and [permit] efficient data access.”

Ans. 17. Appellant fails to address and challenge this finding. Accordingly, we sustain the Examiner’s rejection of claims 65, 66, 73, and 74, as well as dependent claims 67, 68, 75, and 76 not argued separately. *See* Reply Br. 12.

DECISION

We reverse the Examiner’s rejection of claims 63–78 under 35 U.S.C. § 101.

We affirm the Examiner’s rejections of claims 63–78 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED